G. R. S. III—1] 1920.

GENERAL AND REVENUE SECRETARIAT.

(Courts.)

NOTES.

File No. 258—29

FILE HEADING.

Appeal to the Chief Court against the order of acquittal passed by the Sessions Judge of Mysore in Cr. Ap. 20 of 29 —

From

No.	Dated	Received

Diary No.	Enclos.	Spare Copies.	Serial No.

BRIEF ABSTRACT OF LETTER.

NOTES AND ORDERS.

G.R.S. III—3]

Routine Notes.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

19389

1/68

22.4.20

Re recd this criminal case & assess. (reptd as well as appeals) filed by the Asstt. Com. Supdt. under Sec. which is reptd. that accd. is acquitted in the Cant. & desires magn. may be called for and his opinion that pet. appeals should be as to whether an appeal can be preferred against the acquittal or not.

[illegible]

4/4/20

to the Asst. Comr. Cantt. with compliments.

[redacted]

Re Dist. Magte. take magn. may be informed that accd. have been called for in this case & that his opinion & the Public Prosecutor as to whether an appeal can be preferred may be submitted

[illegible]

20

N.B.—Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form.

Please put up

[illegible]

D.M. 22/4

G.R.S. III—3]

4389

Routine Notes.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

Submitted with two drafts as ordered.

24/4/1920.
24/4

Issued no 4 24894
& no 4 24895
on 3rd May, 1920.

N.B.—Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form.

WD A0283—GPB—5,000—18-8-17

MYSORE STATE RAILWAYS.

File No. Office Note.

Serial No.	Subject

1) First Member's orders dated 14th April 1920 directing to call for a copy of the Judgment in the Assault case of Mr. Ananthacharya, Superintending Engineer, Mysore Railways.

1820
24-4-20.

2) The copy of the Judgment which had been called for prior to the receipt of the Member's orders has been received and is submitted herewith for information.

3) From the Judgment referred to, it will be seen that the accused, who was convicted by the City Magistrate, Mysore and sentenced to one year's rigorous imprisonment (Flag A) has been acquitted by the District and Sessions Judge. As the decision of the Magistrate has been completely set aside in the appeal and as an Officer of Government of high status is chiefly involved in this, I am of opinion that this is a fit case to go up to the Chief Court for appeal. If approved, the Chief Secretary will be requested to take the necessary action.

24.4.20

First Member)

4) Refer to Govt Advocate

24.4.20

28 APR 1920

1820

28/4/20

WD A0283—GPB—5,000—18-8-17

MYSORE STATE RAILWAYS.

File No. Office Note.

Serial No.	Subject

1820
29-4-20

29429

Ch Secy
30 APR 1920

With Compliments
Chief Secretary)

28/4/20

Chief Secy
30-4-20

Subd
30/4

5) No records of this case have been called for together with the opinions of the Dy. Prosecutor. The Govt. Advocate will be consulted after the receipt of the records.

Reqrs to be put up before Subd.

6) Subd for perusal
D. M.
30/4

Chief Secy

III Member

6176
4.5.20

7) Noted
D. M.
3/5

in another file that pertains to the matter in which previous orders were passed

Subd
5/5

8) Please send an urgent Reminder for the records & put up with file

Subd
D. M.
6/5

9) Subd with a reminder as ordered - The C.B file required is linked to this

Returned S.C.S.

7/5/1920
7/5

WD A0283—GPB—5,000—18-8-17

MYSORE STATE RAILWAYS.

File No. Office Note.

Serial No.	Subject
	W/ Forwarded U.O. with complaints to the Govt Advocate for favour of opinion whether an appeal may be preferred to the Chief Court against the decision of the Sessions Judge Mysore. B.C.O. Mahadevappa 14/5/20.
31	

U.O. No. 58-G
Protection
Dy 14-5-20.

U.O. No. M 93/G-20
15/5/1920
Chief Sec.

1/ I am of opinion that this is a fit case in which an appeal against the order of acquittal may be preferred. The appreciation of evidence by the Sessions Judge Mysore appears to me to be incorrect.

15-4-20

2/ Submitted for orders with reference to para 1 above

17/5/1920
17/5

2167

G. R. S. III-2)

General and Revenue Secretariat.

Ch File No. 236 of 1917.

Serial No.	
3	From. The District Magistrate, Mysore District Roc. 1691/J 19-20 & 6th May 1920 recd. on 11th May 1920 Forwards the opinion of the Public Prosecutor Mysore Dr., in the matter of preferring an appeal to the Chief Court [illegible] the Sentence of acquittal [illegible] Judge in C.R. No 3/J 19-20 on the file of the Court, (Complainant [illegible] the Executive Engineer) together with the records submitted for orders.
	12/5/1920 14) Please put up the said file to-day. D. M. 12/5.
	15) Kind attention is invited to the linked Rly Secrett file wherein the opinion of the Govt. Advocate is recorded to the effect that an appeal in the Chief Court may be preferred. Subd. with a draft Govt. for approval 12/5/1920
	15) In this case, the question is only of appreciation of evidence. I have studied the judgt of the Sessions Judge & it seems to be difficult to accept the correctness of

NOTE—Contn. sheet.

Serial No.

some of the inferences drawn by the Sessions Judge. The theory of the manufacture of a false case by the complainant seems to be rather laboured & cannot perhaps be sustained. At any rate, it seems to be a fit case to be placed before the Chief Ch in appeal & both the Public Prosecutor & the Govt Advocate are of that opinion.

Draft Cr. A. is submitted for orders.

D. M.
22/5.

6680
24.5.20

III Member

(1) Draft approved.

Ishi

(2) The Govt Secretary will note that some statements are made by the Accused as regards his appeal & his plea which will have to be taken notice of after his appeal is disposed of. In either case the plea may be re-submitted after his release & the Govt's comments invited.

Ishi
24/5

(3) Remembrancer's Office

(3) Mr. Das

and take an extract of the above orders.

D. M.
26/5

(4) Remembrancer's Office

Note—Contn. sheet.

G. R. S. III-2]

General and Revenue Secretariat.

C5 File No. 256 of 1919.

Serial No.	
4	To the Standing Counsel, " Govt. Advocate " Govt Advocate no 20526-8 dy 1.6.20 Requests the Govt Advocate to prefer an appeal to the Chief Court against the order of acquittal in the case 21) The Ry Secty papers are forwarded herewith. returned to that Secty (vide linked dy) with a copy of the above G.O. 22) With regard to the III Members order in the Perrais case, the file will be kept in Sec B2 until the receipt, from the Govt Advocate, of the judgt of the Chief Court in the appeal. 23) The acquittal order is said to have been reversed in appeal. Please arrange to see copy of the judgt. D. M. 17/7 24) A draft is submitted accordingly Sd 21.7.20 Asst 24/7 25) Issued D. M. 28/8

NOTE—Contn. sheet.

the Govt. Advocate

28/7/20

G. R. S. III-2)

5873

General and Revenue Secretariat. | Cs File No. 256 of 1919.

Serial No.	
7	To The Government Advocate in Mysore. No. G. 3127. Dt 7th August 20. Requests to send a copy of the chief Court's judgment on the order of acquittal passed in C. A. no. 31 of 19-20 on the file of the Sessions Judge, Mysore.
8	From [illegible] Advocate in Mysore. Ltr dt 19/11 [illegible] received on 23-9-20. Forwards a copy of Judgment in Criminal Appeal no 126 of 1919-20 [illegible]

RECEIVED
25 AUG 1920

Subd. for orders with reference to para 1a above

1-10-20. a) The Ry Sectt papers returned. What Scott, vide para 2 supra, are perhaps necessary for reference. Papers may be called for

1/10 b) Action may be taken separately after file 93/20 is rec'd & orders.

1/10

c) Orders in Cs 93-20 (rejecting the memorial) have been passed & that file is subd. with a draft separately subd. for further orders.

9-10-20. 9/10 d) Please see members orders on para 18. Flag the statements

NOTE—Contn. sheet.

G. R. S. III-21

General and Revenue Secretariat.

File No. 256 of 1919.

Serial No.	
	regd to' d question note? D. M. 21/10
	This may be sent to R/I Secty for getting back the file relating to the Case for reference, since the information required is not in this file. Subd. 21/10 D. M. 21/10 Ad Calling for the reqd file & Has the office note been retd? D. M. 19/11
9	To The Secretary to Govt. for Railways. No. G. 10480 dd 26-11-20. Requests that the file of papers of his office re: the assault case of Mr. Anantha charya may be forwarded to this office.
10	From the Secy to Govt for Railways, No R.S. 1414 dd 2nd Dec 1920. forwarded the record called for in Sl. 9. Seen with a draft. With ref to para 33, it is ascertained that the file has not yet been received but is under issue. Seen 15/12/20. Draft & Ltr for action D. M. 23/12

NOTE—Contn. sheet.

G. R. S. III-2]

General and Revenue Secretariat.

C 5 File No. 256 of 19[illegible]

Serial No.

11 To

The Secretary, Mysore Railways.

No. G. 12897 Dy 6-1-21.

Acknowledges the receipt of the records re: the assault case of Mr. Anantha charya.

Subd. With reference to para 18, it is submitted that Mr. Anantacharya's statements ~~of~~ about the affairs in his office may be contained in his official report to the Agent, Mysore Railways, which is in a sealed cover. All the other records in the file were examined and no such statements were to be found.

Ess
20/1/21
ASO 20/1

Please bring up in person
D. M.
21/1

21/1

Subd. As required by the ASO Rs, it has been ascertained from the Rly Secretary that Mr. Anantacharya has been given combined leave till June 1921 ~~preceding~~ prior to retirement.

Ess
15/1/21
ASO 15/1

NOTE—Contn. sheet.

G. R. S. III-2]

General and Revenue Secretariat.

05 File No. 256 of 1919.

Serial No.	
C	It seems to be a proper case for orders whether, under the circumstances, the matter may not be dropped. D. M. 16/2
4778 17.2.21	III Member D. M. 22/2
	Draft by Secy for approval Addl 24/2
	No. 9 14361 D. M. 4/3 dt 10.3.1921

CHIEF SECRETARIAT III Recd 24 Feb 1921

NOTE—Contn. sheet.

G. R. S. VI—G/32]

SUBJECT.....

.....

.....

Diary No. of letter replied to.....

GENERAL AND REVENUE SECRETARIAT

( )

, the *191* .

Date of issue 3/5/20

Signed by Mr P. M.

Section Ch

File No. —

Serial No.

No. G 24895

To

The District Magistrate

Mysore District

Sir,

I am directed to request you to be so good as to obtain and forward the opinion of the Public Prosecutor as to whether an appeal can be preferred against the order of acquittal passed by the Sessions Court, Mysore, in the Criminal Case of assault filed by Mr. Ananthachar, Superintending Engineer. I am also to state that

P.T. over.

No. 1691 65/20
19-7-20

Office of the District Magistrate,
Mysore District.
Camp Heggadadevankote, 5th May 1920.

From

P.F. Bowring, Esquire,
District Magistrate,
Mysore District.

2169
19 20
C/S
247-19
3

To

C.S. Balasundaram Iyer, Esquire, B.A.,
Chief Secretary to the Government of
His Highness the Maharaja of Mysore,
Bangalore.

Sir,

I have the honor to state that I had already called for the opinion of the Public Prosecutor, Mysore Division, in the case of assault filed by Mr. Ananthachar, Superintending Engineer, in the matter of preferring an appeal to the Chief Court against the order of acquittal passed by the Sessions Judge, in Criminal Appeal No.31 of 1919-20 on the file of the said Court. His opinion was received by me on the 28th April 1920, which I herewith forward for the information of Government as desired in your letter No.G. 24895/Cts. dated the 3rd instant.

2. With reference to the last sentence in your letter under reference, I presume the records have been called for from my Court, but no reference has been received in this matter. The records in C.C.No.247 of 1918-19 on the file of the City Magistrate, Mysore, bearing on the subject, are, however, also sent herewith.

I have the honor to be,
Sir,
Your most obedient servant,

P.F. Bowring

District Magistrate,
Mysore District.

A.V.

From

The District Magistrate,

3.300 Mysore District.

To

The Chief Secretary to Govt.,

Bangalore.

Dated 5th May 1920.

Despatched

Received

General No.

No.

Enclosure No.

Forwards the opinion of the Public Prosecutor, Mysore Division, in the matter of preferring an appeal to the Chief Court against the sentence of acquittal passed by the Sessions Judge in C.R.No.31 of 19-20 on the file of his Court.(Complainant Mr.Anantachar, Executive Engineer).

From

The Public Prosecutor,

Mysore Division,

M y s o r e.

To

The District Magistrate,

Mysore District,

M Y S O R E.

Re. The matter of a reference being made to Government by the District Magistrate, Mysore, for preferring an appeal under Sec.417 CPC against the judgment of acquittal passed on 1st April 1920 by the Sessions Judge, Mysore Division, Mysore, in regular criminal appeal case No.31 of 19-20, this memo is submitted by the Public Prosecutor, Mysore Division, Mysore, to the District Magistrate, Mysore District, Mysore, with a prayer that for the reasons hereunder submitted Government be requested to prefer an appeal against the said order of acquittal.

1. The learned Sessions Judge in the concluding para of his judgment viz., in para 18, gives a summary of his reasons for holding that the accusation against the accused is not true. It is enough for my present purpose to show that the reasons assigned by the Judge are erroneous and the order of acquittal has resulted in a serious miscarriage of Justice,

2. The Sessions Judge in para 18 opines in the first place, that the evidence establishes, that the complainant had taken up an hostile attitude towards the accused before the occurence, and passed adverse orders calculated to harm accused, This matter has been discussed by the Judge in para 10 of his judgment, as affording a motive for the complainant, to bring a false case against the inoffensive and innocent accused. Para 10 of the judgment deals purely

purely with the evidentiary value of exhibits D 1 to D 11 documents pertaining to the expanded metal frame windows. From these exhibits, the Judge states that the undernoted facts are disclosed:, to wit:,

(1) That as per shara of the accused underneath the Abstract estimate viz., Ex.D 2 accused has agreed to work at estimate rates barring parapet wall, glass work and expanded metal, for which data may be kept andrates passed.

(2) Complainant himself had sanctioned the design and approved of the frame fitted up with expanded metal.

(3) If complainant was not prepared to pay as per data system he should in fairness have informed the accused before work was commenced.

(4) That the objection to pay as per data system was only raised after completion of the work.

(5) When Mr. Steele recommends Rs.3-6-0 as per data system complainant says "I don't want expanded metal, work out bars as instructed personally."

(6) By the above order of the complainant as per Mr. Steele's statement accused would lose Rs.5,000/-

(7) When Mr. Steele points out on 13-3-19 that work was completed as per approval of authorities and that accused should be paid Rs.7,000/- complainant orders on 16th March 19 that the expanded metal may be fixed without frames. Thus the Judge holds that the complainant had taken up an hostile attitude and had contrary to the terms of the agreement, passed orders regarding the rates to be paid after the work was completed with his approval and that the effect of these orders was to put accused to a loss of nearly Rs.5,000/-

3. It becomes necessary to see how far the learned Judge's observation are borne out by exhibits D 1 to D 11. In my humble opinion the Sessions Judge has not gauged the situation correctly and his conclusions are incorrect in an much as he has taken into consideration only certain portions of exhibits which favoured

which favoured the defence theory. As per D 3 on 6-6-17 complainant ordered accused to construct a Paint Shop at Mysore. On 8-6-17 the then Executive Engineer, Mr. T. S. Raghavachar took an agreement Ex.D 1 from accused, whereby accused bound himself to work at the estimated rates. D 2 is the abstract estimate attached to the agreement. At the end of this estimate after the singnature of the Executive Engineer had been affixed thereto, there comes into existence a note, in a different ink, in the handwriting of the accused undated and not countersigned by the Executive Engineer, to the effect that the estimated rate has no application in so far as three items, viz., expanded metal, parapet wall and glass work are concerned, for which data should be kept and rates settled. The accused's original offer and acceptance therefor was only for estimates rates. The estimated rate for expanded metal windows is Re.1/- per square foot. Mr. Dani, examined as D.W.1 states that the shara made by the accused ~~made~~ on D 2 is not a valid document. Mr. T. S. Raghavachar was examined as P.W.5 and he states that there was no shara made in his presence, that the accused never in sisted upon his being paid as per data system but that he was complaining that the rates were not enough for him etc., Thus it becomes clear that accused, who has given us an ample proof of his being long pursed and influential must have bought the good will of some underling in the office and surreptitiously made the shara on D 2 in order to advance, with some show of justification, his claim for enhanced rates, as per the data system. As deposed to by Mr. T. S. Raghavachar, he, more as a matter of concession than of right, recommended a rate of Rs.2/- for expanded metal and a sample of this window was approved by the Superintending Engineer-the complainant on 22-11-18 in the presence of the Executive Engineer. Thereupon on 25-11-18 the accused for the first time, sent up to the complainant a petition marked as D 4 complaining of loss etc. This petition was sent as per D 5 by complainant to the Executive Engineer. In D 5 the complainant points

points out that accused was not entitled to anything more than what had been agreed to in the agreement. Complainant sent another letter to the accused by way of reply to D 4 regarding the same matter on 30-11-18. Though this letter must have reached the hand of the accused on the 1st or 2nd of December 18, accused had nothing to state in answer to D 6. It was only after the receipt of the stern reply of the complainant, that accused appears to have thought seriously of the matter and to have thought that it was worth his while to make a shara on D 2 to support his claim for enhanced rates. Therefore, it is, that about a month and 20 days after, viz., on 18-1-19, accused in a bold and businesslike manner sends up D 7 to Mr. Dani, in which he gives a data for the windows and asks for payment. It is significant to note in this connection that at the time when accused wrote D 7 on 18-1-19 Mr. T. S. Raghavachar, who was present when the agreement and abstract estimate had been drawn up, was succeeded by Mr. Steele, who was completely in the dark, regarding previous transactions or agreements. It is also interesting to note, as the good luck of the accused would then have it that the complainant too had gone at that juncture, on a months' leave, and Mr. Dani, the Agent, was looking after the duties of the Superintending Engineer also. Thus, it is, when Mr. Ananthacharya and Mr. T. S. Raghavachar--gentlemen who were conversant with all thedetails of the transactions were absent, Mr. Dani is petitioned to, by the shrewed accused, and Mr. Dani in the usual course of official business, asks his Personal Assistant Mr. M. A. Ramanujam to put up a memo, which is sent to the Executive Engineer,-Mr. Steele-to arrive at a settlement with the contractor, as per the data system. Evidently Mr. Dani had no reason then, to suspect the truth of the allegation made by the accused in D 7 and he accordingly ordered, as a matter of official routine as contained in D 8. Mr. Steele, as noted already, being new, innocently took a work order on 17-2-19 from accused, on the basis of the data

data system and settled a rate of Rs.3-6-0. Mr. Steele, after having taken D 9, sent up a letter of recommendation dated 20-2-19, to the Superintending Engineer, craving sanction of the recommended rate of Rs.3-6-0. When D 10 was sent and received, the complainant had returned from leave and had resumed charge. On complainant receiving D 10, he naturally and rightly, being conversant with the whole history of the claim, being actuated solely with the consideration that ought to weigh in the mind of every Government servant, who is worhh his salt and solely with a view to safe guard the interest of Government, finds fault with Mr. Steele and states that the rate of Rs.3-6-0 is too much and is far in excess of Rs.2/- fixed by Mr. T. S. Raghavachar. So we find that complainant on 22-2-19 makes a shara on D 10 to the effect "I don't want expanded metal. Work Out bars as instructed personally." I fail to see any iniquity in the above order, to justify the inference, that complainant was hostilely disposed towards the accused. Then again Mr. Steele, naturally being inclined and interested in seeing his recommendation accepted, pressed the matter again to the favourable consideration of the complainant, as per D 11 on 12-3-19 on the ground that windows were prepared, whereupon complainant, on 16-3-19 chooses to adopt a middle course and orders "that expanded metal may be fixed without frames as per D 11 A" It merits notice in this connection that the window frames were not fixed to the building and it is not clear if all the frames were ready and complete. The above materials are deemed enough by the learned Sessions Judge to think that complainant's orders were <u>inequittable</u> and that complainant's conduct in the matter under discussion, betrayed feelings of deep hostility against the poor and helpless accused. I refrain from making any further comment regarding the soundness or otherwise of the learned Sessions Judge's views in the matter. It is enough for my present purpose to urge that the materials on record do not warrant such an inference and it is of course for the

Hon'ble Chief Court to decide which view of the case is correct.

4. Now assuming for the sake of argument that as per Judge's finding, complainant by his hostile attitude had caused loss to accused to the extent of Rs.5,000/- the person that had a motive to wreake his vengence and to feel aggrieved was certainly not the complainant, but clearly the accused. So that if any body had a cause and an incentive to way lay and assault complainant the accused surely had. In this view of the case, it is hard to follow the reasoning of the learned Sessions Judge when he opines that the circumstances detailed in Ex.D series, afford a strong ground or basis for the conclusion that complainant had a strong motive to father a crime upon the innocent accused.

5. In paras 11 and 12 the Sessions Judge adverts to the motive which complainant had, to trump up a false charge against the accused. The reasonings of the learned Sessions Judge may be analysed as hereunder noted:--

(i) Complainant's version re. the incident of 31-3-19 is not true, as he made no report to his official superior.

(ii) Venkatasubbiah is a false witness and his evidence is secured for the purpose of having in readiness a good defence for the contemplated action threatened in the accused's notice D 12 of 2-4-19.

(iii) Venkatasubbiah's name is not mentioned by complainant on 3-4-19 when he gave his statement before the Assistant Superintendent of Police, and so his evidence must have been secured subsequently.

(iv) The evidence of Venkatasubbiah was not subjected to the test of cross examination, and though accused has been prejudiced, yet no retrial is ordered, as accused is to be acquitted on other grounds.

(v) The version of the accused is true as is borne out by

the constitutional method adopted by him, by sending a Lawyer's notice on 2-4-19, both to the complainant and to Mr. Dani.

(vi). Complainant should have been in great mental distress after his having been informed of the contents of the notice and of the action threatened therein.

(vii) Complainant had already incurred Government displeasure because on 19-3-19 Government had ordered that his promotion for six months should be stopped and that he was therefore disspirited, uneasy, and anxious to see that no adverse cir cumstances likely to endanger or hamper his official prospecss, should go to the notice of Government. So the learndd Judge observes that it was very necessary for the complainant to make Government believe "that he was not the agressor but that it was the accused, in order to enlist Government sympathy and support."

Therefore the Judge finds that the complainant had the strong est of motives to smother to death the ire, that arose within him against the Musalman assailant, and to turn this circum stance as if it were a God's send, to capital advantage, by foisting a false charge against the accused. I shall now deal seriatum with the observations made by the learned Sessions Judge, and submit my reasons for holding, that his reasonings are not sound, and are certainly neither consistent with human nature nor with ordinary run of human events. There is no rule of practice and no standing order, that a person in the position of a Superintending Engineer, should forth with report to his official superior, an incident, similar to the one of the 31st March. I can understand the necessity for so doing, if the incident were between the complianant and a Government servant who could not be punished by way of fine, suspension or dismissal, for the complained of misconduct or indecorous talk, by the complainant himself but by his superior in office or by Government. Here was an unhappy incident, between the complainant, --a

Superintending Engineer and the accused--a contractor. He had as much control if any at all, over the accused, as his official superior had, and so, there was absolutely no necessity for submitting a report anent the matter. If Venkatasubbiah's evidence was secured to operate as a defence for the contemplated action threatened by the accused, and if Venkatasubbiah as the Sessions Judge argues is a got up or false witness, surely such a witness, who according to the Judge's views was a subordinate of the complainant, could have been made to play a more important and valuable part in support of the complainant's version than has actually been the case. The very fact that Venkatasubbiah, as an honest man, does not pose to have been present during the stormy meeting and during the use of unparliamentary language, is an argument, that negatives the theory of the learned Sessions Judge. He could easily have been made to support the complainant in all particulars, There is one significant circumstance in the statement of Venkatasubbiah that merits deep consideration, and that is, that when complainant, complained to him, that accused had called him a liar, Venkatasubbiah says, the accused said in a loud tone, "I did not say that." This statement, which in a way, favours the accused would certainly not have been made by Venkatasubbiah, if he were a hired witness, to play to the tune of the complainant. The above circumstance undermines the assumption of Venkatasubbiah being a false witness. Further it is to be noted that complainant mentions the name of Venkatasubbiah in his report of 3-4-19 to the Agent.

6. P 1 is merely a letter to the Police intimating the fact of the assault, and P 2 is the statement of complainant made in answer to queries put by Mr. Everard on 3-4-19. Discrepancies which are at best too trivial to be animadverted upon, discrepancies which go a considerable way to point to the honesty of the deponents, discrepancies

which are merely seeming but not real, when the whole evi dence is carefully scrutinised, are viewed as important and determining factors, not merely in the case of this witness but in the case of all the witnesses who help the prosecution, to conclude, that the complainant is a hopeless liar, and his witnesses Venkatasubbiah, Mr. Raghavachar and Mr. Ramaiengar are no better. It is not for me to comment upon this method of appreciating evidence. It is the pri vilege of the Hon'ble Chief Court, and so advisedly I refrain from further comment.

7. Suffice it for the present to submit that in the first place there is no provision in the Criminal Procedure Code with authorises the reservation of cross examination. The accused, undoubtedly, has a right to cross examine prosecution witnesses, once before charge, and again, after charge If the accused, who had secured the services of 5 legal practitioners would not exercise the right on both the occassions when offered, it was certainly not to be expected of any Magistrate, that he should so shape his action or proceedings so as to suit the whim of the accused or his counsels. In my opinion there has been no hardship, and the accused has none but to blame himself or his legal advisors, if the opportunities were not availed of. The matter being so clear as will be amply borne out by the Magistrate's case,- proceedings or notes, I must admit my inability to follow the reasonings and refuse to accept the correctness of the observation of the learned Sessions Judge, contained in para 12 of his judgment. The learned Judge observes, that there is considerable force in the argument of the accused's Advocate when the said Advocate strenuously contended that the accused had been greatly prejudiced in his defence by the denial of the right to cross examination. The matter is viewed so seriously by the Judge as being a circumstance, enough to vitiate the whole trial, but for the fortunate cir

circumstance, that retrial was not deemed necessary, in view of the view, taken by the learned Sessions Judge of the whole case.

8. The Judge then proceeds to record a finding, that the version of the accused regarding the occurence of 31-3-19 is true, as accused gave a notice to the complainant and to the Agent on 2-4-19 regarding the same, and that complainant having had opportunities to know the contents of the notice refused to accept the delivery of the notice, became greatly crest-fallen, became agitated in mind, and became a prey to such inconsolable and alarming thoughts that his mind was in such a morbid state, as to impel him to some how or other turn the table against the accused. At this juncture a Musalaman assaults him, and complainant accepts this assault as God's gift, and immediately makes up his mind, that God in HIS mercy and wisdom, had thrown before him a splendid opportunity to implicate accused and thus turn the table against him. In short, the above are as per Sessions Judge's opinion "The impelling forces of circumstances that lend support to the view that the complainant had stronger motives to implicate the accused, and to turn the table against him."

9. Now turning my attention to the first item viz., the Judge's finding that accused's version is true because he sent a notice, it is sufficient to point out that the contents of the notice are a highly exaggerated version of a fictitious incident. It is hard to believe, that a gentle man of the rank, status, training, education, experience and above all the age as that of the complainant, should have had cause to take offence merely because the accused represented his grievances and asked for settlement of his rates. That complainant should thus have lost all control over himself in such a disgraceful manner, as to indulge in slang, as ~~data~~ detailed in para 3 of D 12, and that, in the presence of many people who had gathered during the gallata is, in truth,

too much to be believed. The very absurdity of the accusation carries with it its own condemnation.

10. In this connection it is necessary to advert to certain circumstances which the Judge has failed to notice. The notice was issued from a Lawyer's office, and so the logical inference is, that the accused had before so doing the benefit of a legal advice. This conduct on the part of the accused is capable of being interpreted in a two fold manner. One is, that the accused had a just grievance for complaint, and the other is that it was considered to be more politic and serviceable, to forestall any action on the part of complainant if he were so minded, by a garbled and highly coloured version, so as to operate as a defence to such an action, than to abide in quietness, any such action. If the accused had a grievance worth the name, he would be the least likely person to omit to examine even a single witness in support of his allegation, specially inview of the fact, that he was not found to be wanting in the number of his supporters to foreswear themselves, in attempting to prove the false plea of 'alibi.' The fact that accused had many supporters and friends in the very office of the complainant and in those of the Agent and Executive Engineer, is made manifest by the undeniable fact that accused was able to know the contents and to summon by giving a long list, of records kept in the Department, nay, records purely of a confidential character.

11. The accused, surely, if the matter contained in D 12 were true, would have examined a horde of witnesses in proof thereof, and would not have failed to afford materials to probablise the theory accepted by the learned Sessions Judge. More than a year had now gone by. Has the accused up to now, sought remedy in a court of law for the assault and insult, as noted in para 7 of D 12? The whole accusation is so transparently a made-up affair, that, it does

does not merit further scrutiny.

12. Next the Sessions Judge observes that complainant had known the contents of D 12, before he refused to accept the notice sent to him on 2-4-19. What materials the learned Judge had in the recorded evidence to arrive at the above finding, I am unable to understand. I might be credited to have carefully studied the records, and I can, without fear of contradiction, state, that no where in the evidence, is there anything to support the Sessions Judge's conclusion. On the other hand the complainant states in positive terms, that no notice was brought to him and that he refused none. Mr. Dani in his evidence states that he saw the copy of the notice sent to complainant, only on the 3rd of April 19. Has the post man or the person alleged to have written the shara of refusal, been examined by the defence to prove that complainant refused to accept delivery of it? What Mr. Dani says, is that he saw D 12 on 3-4-19. Has he been asked by the examining counsel for the accused, if D 12 was opened, or remained in tact, when it was brought to him for his perusal? Is there anything in the record to show that the Manager of Mr. Dani's office had opened the sealed cover and placed the same before Mr. Dani for Mr. Dani's perusal on the 3rd? At least is there any evidence on record to show, as to who it was, that had received the notice addressed to Mr. Dani? Has the person who had signed in token of the receipt of the notice, on the back of the postal acknowledgment been examined to show that he received it on the 2nd, opened it, read its contents, and thereafter went to the complainant and informed him of its contents? In the absence of any evidence regarding the above matter, I fail to see how the learned Sessions Judge is justified, in observing that he is 'convinced' that complainant should have been informed of the contents of the notice by the Manager. Further more, accepting for a moment the learned Sessions

Judge's observation or finding, it baffles my comprehension as to what motive complainant could possibly have had, or what earthly purpose could he possibly have served, by refusing to accept delivery of a notice, the contents of which he already knew. The surmise is too untenable, to merit any further consideration.

13. In dealing with this question of motive, it is all important to test the coherency of the reasoning of the learned Sessions Judge, when he adverts to the mental condition of the complainant on the evening of the assault. In the first place, though complainant had been stopped his promotion ~~of~~ for having failed to leave a memo regarding the shortage of implements etc., valued at about Rs.400/- which was however made good by the Store-Keeper, while complainant was Executive Engineer at Tumkur on 1911-12, yet along with the same communication, there is Mr. Dani's letter, wherein Mr. Dani assures complainant, that he has not been affected finan cially by the order under consideration, and that Government have acknowledged in appreciative terms, his good and honest services in the Mysore Arsikere Railway. The learned Sessions Judge does not choose however to notice this communication for rea sons which I cannot at present glean. Can the above circumstance be viewed as being enough to base the inference, which it has pleased the learned Sessions Judge to draw. In my opinion the above is an incident, which may befall the best and ablest of Public servants during the course of their official career. It cannot certainly be taken to be such a potent factor, as to create a revolution in the mind of the complainant, and much less can it impel complainant to become so very anxious of his prospects, if he should allow accused to complain against him for assault and insult. The most serious consequence imaginable, was after all, the imposition of a fine, for having lost temper even if the matter were proved to the hilt, in a court of

law, and perhaps, a note of warning or censure, by the Government, if Government were so minded. But the learned Sessions Judge fails to note, that complainant, who ought in fairness to be presumed, to be endowed with certain amount of forethought and good sense, could with ease have thrown oil over troubled waters, by sending for accused and by expressing words of regret, for the alleged unhappy incident of the 31st March 19, as required by the accused in D 12 itself. While the matter was capable of such easy solution, I plead inability to discern the force and consistency of the Psychological theories which it has pleased the learned Judge to lay down.

14. Can it be seriously contended, even for a moment that there was any possiblity for complainant's mind to become morbid and that he therefore, smothered to death the feelings of vengence against the real Musalman assailant and substituted the accused's name, when questioned by Messrs. Raghavachar and Ramaiengar? To my mind at any rate, this theory does not commend itself. Who can this Musalman assailant be? The Sessions Judge in para 15 of his learned Judgment, states that "it is <u>proved</u> by the testimony of Mr. Dani, that some Muhamedan contractors were dissatisfied with the settlement made by <u>Mr. Ananthacharya</u>, that Mr. Dani had apprehended some trouble from one of them, and that there were appeals pending before him against the settle ments made by Mr. Ananthacharya. "It is therefore clear that the complainant had made some enemies and had been unpopular with contractors." I have read with tolerable care the evidence of Mr. Dani. In fact, I have a copy of Mr. Dani's recorded evidence before me, when penning the undernoted lines. What Mr. Dani states is <u>"as far as I know the relations between the complainant and contractors were alright</u>. I know Valli Muhamad. He behaved unlike

unlike a contractor and so I told him I could not settle his case just then and asked himto leave the room. He did not complain to me of ill treatment by the complainant, etc. He would not accept Mr. Ananthacharya's settlement. I ordered that his contract should be cancelled etc. etc. I was satisfied with his subsequent behaviour and so gave him that contract again. I know Noor Muhamad Sait. I do not remember any complaint of ill treatment by him etc., etc. The late Mr. M. G. Varadachar had given a notice on behalf of certain contractors who had not accepted our decision." This is all the evidence of Mr. Dani, relevent to the point under discussion. How in the face of recorded evidence, which I have copied word for word, is the learned Sessions Judge justified in concluding that Mr. Ananthacharya had some Musalaman contractors as his enemies and that the assailant on the evening in question must be one of those Musalman contractors is a pointwhich merits the consideration of the Hon'ble the Chief Court.

15. Before dismissing from our consideration the question of motive, it is to be noticed, that though the learned Sessions Judge states in the end of para 12, that complainant "had stronger motives" to implicate accused, thereby signifying that the motive for a false accusation was stronger than the motive which accused had to assault complainant, yet he contents himself by makingonly a few observations in the last portion of para 11 to the following effect:- (1) Accused had not been shown tohave known the adverse orders passed prior to 31-3-19. These orders were passed on official files and were not to be communicated to accused at that stage. (2)It was to the advancement of accused's interest to please complainant and so he could not afford to lose temper and offer an open insult to complainant" Therefore it becomes necessary for me to dwell at some length about this aspect of the case, and show that the learned Sessions Judge has

again

again erred in appreciating the evidence on record, regarding this all important point, which conclusively points to the accused as being the culprit and not to the imaginary Musal man contractor. From the exhibit D series, it has already been snown, that accused attempted to ameliorate his financial position by surreptitiously making a shara on D 2 and to avail himself of the splendid opportunity afforded by the absence of complainant and Mr. T.S.Raghavachar to successfully advance his claims for enhanced rates as per data system, and accordingly sent D 7 to the Agent. That the Agent as per D.8 fell into the trap, and directed Mr. Steele to settle the contractors accounts. That Mr. Steele got D 9 from accused, and thus accused would thus have achieved his nefarious purpose, but for the unfortunate return of complainant from leave. So it comes about, that, when Mr. Steele sends D 10 it is received, not by Mr. Dani, who would naturally have sanctioned Mr. Steele's recommendations, but by complainant. And complainant, as any other capable and honest public servant would and should have done, takes exception to Mr. Steele's course of action, and knocks the proposal on the head, as evidenced by D 10 A. D 10 A is dated 22-2-19. About 19 days after, that is, on 12-3-19 Mr. Steele once again submits D 11 and commends accused's case to complainants' favourable consideration for the reason that the window frames were prepared. This evidently denotes that Mr. Steele and accused should have met and talked about the matter, and that accused should have told Mr. Steele that window frames were prepared by him, and that it would entail heavy loss on him if he were asked to put iron bars in lieu of expanded metal. However on 16th March 19 complainant, respecting Mr. Steele's recommendation, in a way, chooses to meet him half way and orders as per D 11 A that expanded metal may be fixed without frames. It is to be noted here, that the complainant simply ordered expanded metal ~~windows~~ to be fixed without frame, without

fixing the rate therefor. So that after a lapse of a fortnight, that is, on 31-3-19 the accused, who was in need of money and who, even prior to the completion of the construc tion of the Paint Shop complained of loss in diverse partilars, should have had cause to harbour the belief that complainant was in the way of his getting enhanced rates, and that complainant was responsible for payment being deferred. It is under the above state of circumstances, the accused goes to the office Room of the complainant on 31-3-19, and insists upon immediate settlement of his accounts. Complainant said he could not do so, as he had no time to look into the papers. Then the youthful accused calls complainant a liar, and creats a scene. What fine temper accused had is made evident by a perusal of Mr. Dani's sworn testimony. "The accused came to me in a most excited manner or condition one dayand I thought he was not a person who could betalked to at that time etc. The next day or the day after the accused came into my house without announcing himself. He looked as if he had lost his head. I told him to see me at the office and then he went away." In the cross exami nation of Mr. Dani it is known that the first interview was nn 31-3-19. It does not require any stretch of imagination to assume that the accused is a person on an irascible temper. The next day, namely 1-4-19 was a public holiday being Yugadi day. Accused consults his council Mr. K. Ramasawmy, and causes D 12 to be sent. On the evening of the date of occurence at about 4-30 or 5 P.M. accused goes to Mr. Steele's Office room and sees him as spoken to by P W 8 and P W 11, naturally to know what orders complainant had finally passed anent the matter sent up for favourable consideration by Mr. Steele. The Complainant had on 2-4-19 passed final orders, which blasted all the hopes of the accused. When the learned Sessions Judge had thought fit to impute knowledge of the contents of the notice to complainant upon no evidence worth the name, I think there are certainly better materials on record, to presume, that the accused must have been informed of the adverse order, by Mr. Steele, just an hour or

or so before the assault. Under the above circumstances it certainly is not presuming too much, to assert that the fiery tempered accused, was burning with rage and mortification, and not having had the face or the manliness to go to to complainant's office room after the incident of 31st March, lay in wait for complainant, to call him to account after he left the office premises. So it is, that complainant is assaulted by the accused in the manner complained of. If the above circumstances are not enough to warrant the conclusion that accused had strong motives to assault complainant, I fail to see what else can.

16. The learned Sessions Judge is pleased to observe that accused being a contractor, it was to his interest to please complainant and not to offer an open insult to him. That the above observation is not sound is rendered clear by a simple circumstance. If accused's inclinations or intentions were as observed by the Sessions Judge, accused would certainly not have sent the copy of the notice to complainant's official superior Mr. Dani. The accused, as a sensible and sane man, would have waited for 3 days, to await the receipt of a communication from complainant, as required in para 8 of his own notice. How comes it then that accused on 2-4-19 alone sends a true copy of the notice to Mr. Dani also? Does not this incident, betray a spirit of bravado and utter contempt tothe good will of the complainant, on the part of the accused? Even in the face of the above, the learned Sessions Judge, elects to credit accused, with all forethought, discretion, forbearance and worldly wisdom.

17. The Sessions Judge, in para 13 of his judgment, deals with the question of assault and the identity of the assailant. The learned Judge concludes, that it was a Muhamedan that assaulted the complainant, and for so doing relies upon the evidence of eye witnesses Hanumiah setty P W 3 and Krishna Rao P W 9, in preference to that of

of complainant who avers that it was the accused that assaulted him. Complainant is not believed, because the eye witnesses do not corraborate him. It is not difficult to see, that the above eye witnesses are men of straw, mere irresponsible youths, with no formed character, in needy circumstances, and with little or no reputation to lose. As the ill luck of the complainant would have it, it so chanced that these were present at or about the scene of occurence An inefficient Police Head Constable Raghavendra Rao, is entrusted with the investigation of this case by the then City Assistant Superintendent of Police-Mr. Everard. The circumstances detailed by the Head Constable, which are stated to have lead to the tracing of the identity and whereabouts of P W 3 and P W 9 have an element of romance. The dramatic appearance of accused riding on a byke and the circumstance of Hanumiah Setty pointing out the cyclist as having been the assailant, coupled with the reprehensi ble inaction shown by the Head constable, betray the conduct of one, who wanted to play a deep but double part. It is in truth, a regrettable circumstance, that a Head constable of the stamp of Raghavendra Rao, was entrusted with the inves tigation of a case of this type. I cannot but mention in this connection, that the conduct of such a Police officer, has not as yet been noticed by his official superiors, and that he is still allowed to continue to be in charge of an important Police Station, like Lakshmipuram Police Station, in Mysore City. The efficiency of the Department and public safety, demand that a searching enquiry has to be instituted re. the wonderful method of investigation adopted by the aforesaid Head constable.

18. Charge sheet is placed on 7-4-19. On this date complainant and Hyath Sab P.W.2 are examined. Hyath Sab implicates accused. Case is adjourned to 9-4-19. On 9-4-19 accused asks for adjournment to move the Chief Court for transfer. Prosecuting Inspector brings to the notice of

the court, that the prayer for adjournment is made, with a view to tamper with the prosecution witnesses, and insists upon the examination of atleast the eye witnesses. Thereupon P W 3 Hanumiah Setty is examined in chief, and it becomes evident that the prosecuting Inspector's apprehensions were well founded. The mischief had been wrought though only in part, and the accused, evidently wanted more time, to complete the subornation of the witnesses, so that they might play to his tune, to undermine the prosecution, and to fortify the defence. However in obedience to the provisions of clause 8 of Sec. 526 C.P.C. the learned City Magistrate had to adjourne the case to 21-4-19. On 21-4-19 the case was adjourned 'Sine Die.' When the records were received after the rejectment of the transfer application the case was taken up on 30-6-19, and prosecution witnesses 5 to 10 were examined in chief. The accused, would not cross examine these witnesses then, but reserved cross examination, for reasons which become patent on 20-9-19, when prosecution witnesses 2, 3 and 9 are made to undergo the so called ordeal of cross examination. On 12-7-19 complainant is cross examined <u>at length</u> till 5 P.M. and case is adjourned to 26-7-19. On 26-7-19, the advocate for the accused, asks for adjournment and on this being refused, declines to cross examine prosecution witnesses <u>though present</u>. On 30-7-19 charge is framed, and the accused is required to enter on his defence. It is interesting to note, that in spite of several adjournments between 30-7-19 and 20-9-19, <u>the three eye witnesses and P.W.11 Sunderam Iyer</u> make themselves scarce, in spite of non bailable warrants and attachment proclamation. The accused also absents himself on the plea of sickness, during the major portion of the above hearings. On 20-9-19, <u>accused appears and with him appear prosecution witnesses 2, 3 and 9 the eye witnesses</u>. Their voluntary appearance

in court on 20-9-19 is atleast a very curious and suspi cious coincidence of circumstances, which sets one a think ing if it is not the result of a preconcerted action between the accused on the one hand, and the eye witnesses on the other. On 20-9-19 these eye witnesses are cross examined. The evidence of these three eye witnesses bears unmistakable signs of subornation. Answers calculated to contradict complainant and other prosecution witnesses in each and every particular, answers intended to strengthen the defense theory are secured. Great care and thought worthy of a nobler cause, have no doubt been bestowed, to tutor these witnesses to depose in the manner in which they have done. But fortunately there are materials to prove that the accused overplayed his part. Complainant was sub jected to a lengthy cross examination on 12-7-19 and not a single question to denote previous acquaintanceship with witnesses 3 and 9 was asked. No questions to raise the presumption of interestedness, was even suggested. Even the Head constable P W 10 was not asked the simple question if complainant's servant had accompanied him when he went to find out the whereabouts of P W 3 and 9. The statement of PW 9 Krishna Rao to the effect that the cane he saw at the place of assault was <u>black</u> and that article No.1 was not the cane, is a typical instance of tutoring, carried on to a ridiculous degree. What earthly purpose could complainant and Ramaiengar serve by substituting article No. 1 for the black cane, and swear falsely, that article No.1 was the cane used is, I must frankly admit, beyond my poor comprehension, and range of imagination? I believe I have dwelt at sufficient length, to show, that at least 2 of three eye witnesses were partly tampered with, even during the time of their examination in chief, and that they were presented for undergoing the <u>farce of a cross examination</u>, after their tutoring was complete. These witnesses, (whose evidence

thus bear clear marks of subornation and hence is worth less, nay, not worth the paper on which it is recorded), are believed by the learned Sessions Judge, and a Superintending Engineer, and an Executive Engineer and A Deputy Conservator of Forests, all gentlemen of position, character, education and established reputation are disbelieved merely because they are not corraborated by such type of eye witnesses. It is not for me to say anything further. It is for the Hon'ble Chief Court to judge which view is correct.

19. The last point, that has engaged the attention of the learned Sessions Judge, in para 17 of his judgment, is the question whether the assault complained of, falls within the purview of Sec.332 I.P.C. After careful and anxious consideration, I am not prepared to assert, in a positive manner, that the offence does fall under Sec332. But, as the matter involves interesting and intricate questions of law and fact, I am inclined to think, that I shall be acting properly, if I refrain from further discussion regarding this matter, and leave the question, for the adjudication of the Hon'ble Chief Court. I cannot help submitting in this connection that irrespective, of the offence falling under Sec332 I.P.C, there remains the solid fact, that a high placed and respected officer of Government, was assaulted by a contractor, having purely official relationship with the officer concerned, for an imaginary injustice done to him. Government were pleased to take up the conduct of the prosecution. There has been a clear miscarriage of justice.

20. In my humble iopinion, Government is interested firstly, in keeping in tact, public confidence which expects that a culprit, be he who he may, shall not escape the punishment he merits, for an offence done by him, and secondly in seeing, that a result mischieveous at once to the administration of justice and the interests of the

public, ought not to be permitted to be produced by a wrong or illegal acquittal; and as such, I beg leave to submit, that this is a fit case in which Government ought to be moved to prefer an appeal against the order of acquittal.

M. Srinivasa Aiyangar
Public Prosecutor.
Tanjore District
Tanjore

28th day of April 1920
Tanjore

G.R.S. VI-71]

SUBJECT ~~Order~~ Govt. Advocate in Dist. in Public Prosecutor Mysore to prefer an appeal to the Chief Court against the order of acquittal passed in C.A. 31 of 19-20 on the file of the Sessions Judge Mysore

Diary No. of letter replied to 2469

General and Revenue Secretariat

( )

, the 191 .

Date of issue ~~30/6~~ 1/6

Signed by [illegible]

May this be

i Printed ?

treated as a standing order ?

published in the Gazette, English Part ?

translated ?

v placed at the disposal of the press ?

vi published in the Gazette, Kannada Part ?

Section C4

File No. 256-29

Serial No. 4

Proceedings of the Government of His Highness the Maharaja of Mysore.

Read—

Correspondence ending with letter no. R-O.C. 1691 / J. 19-20 dt the 6th May 1920 from the District Magistrate, Mysore District, requesting Government to direct the Public Prosecutor to present an appeal to the Chief Court against the order of acquittal passed in C.A. no. 31 of 19-20 on ~~Order Thereon—No.~~ the file of the Sessions Judge, Mysore Division, for reasons stated therein

Order no: G 2692 6-8 Records

Under Sect 417, Criminal Procedure Code, 1904 the

P.T.O.

~~Government are pleased to direct~~ request

Government Advocate is requested

to Public Prosecutor, Kupas

~~direction~~, to prefer an appeal

to the Chief Court against the

order of acquittal referred to

above.

for CA
2/5

for Chief Secy

To

The District Magistrate, Kupas

Dated (returning records)

Comptroller to Govt.

" Public Prosecutor, Kupas &c.

Govt Advocate in Kupas.

List of enclosures.

Copied by

Examined by

WD 1744—GPB -30,000 -17-3-19

G.R.S. 26]

A/8

File No Ch - 256 - 19

Serial No. 7

Diary No. of letter replied to 21169

No. G 3127

General and Revenue Secretariat

( )

, the 19

To

The Government Advocate in Jaffna,

Sir,

I am directed to invite reference to G.O. no. G 26926-8/Ch 256-19-4 of 1st June 1920 ~~requesting you to prefer an~~ and 9th appeal to the Chief against the order of acquittal passed in C.A. no. 310-G-20 on the file of the Sessions Judge, Jaffna Division, & to request you to kindly send a copy of the Chief Court judgment for the information of Government.

I have &c

P. Ch/07

By Chief Secretary &c.

7/8

Date of issue 7/8

Signed by Mr Pm

21/7/20

24/7

over.

SUBJECT.

3/8

A

List of enclosures,

Copied by

Examined by

GPB—6,000—1.5.09

2541

20-21

Ch

256-19

No. 39

5139

Office of the Government Advocate in Mysore,
Bangalore, dated the 13th August 1920.

From

The Government Advocate in Mysore,
B a n g a l o r e.

To

The Chief Secretary to the Government
of His Highness the Maharaja of Mysore,
B a n g a l o r e.

Sir,

With reference to your letter No. G 3127/Cts. 256-19-7, dated the 7th August 1919, regarding the appeal against the order of acquittal in Criminal - Appeal No. 31 of 1919-20 on the file of the Sessions Judge of Mysore, I have the honor to state that the appeal was heard yesterday, (the 12th instant), and Judgment was reserved. I shall, in due course, - forward a copy of Judgment for the information of - Government.

I have the honor to be,

S i r,

Your most obedient servant,

Government Advocate..

5773

From the Govt. Advocate in Mysore
No 76 of 21/9/20 recd on 23-9-20
forwarding a copy of the judgment for perusal & information
Submd.
30.9.20

4-1

5093

DIARY No.
1919-1920
SECTION
FILE No. 253-19
TRIAL No.

No. 76
Exe. Ord.

Ch Sec'y
23 SEP 1920

Office of the Government Advocate in Mysore,
BANGALORE, dated the 19th September 1920.

21 Sh

9523

From

The Government Advocate in Mysore,
Bangalore.

To

The Chief Secretary to the Government
of His Highness the Maharaja of Mysore,
Bangalore

Sir,

In continuation of this Office letter No. 37, - dated the 13th August 1920, I have the honor to forward herewith copy of Judgment in Criminal Appeal No. 120 of 1919-20 (Government of Mysore VS. B. Venkataramiah, Contractor) on the file of the Chief Court of Mysore, setting aside the order of acquittal passed by the Sessions Judge and sentencing the accused, - under section 323 instead of under section 332, to be rigorously imprisoned for two months and to pay a fine of Rs. 200/-; in default of payment to be further - rigorously imprisoned for one month.

PRIVATE SECRETARY
23 SEP 1920

I have the honor to be,

Sir,

Your most obedient servant,

Government Advocate.

IN THE CHIEF COURT OF MYSORE AT BANGALORE.

Thursday, the 19th day of August 1920.

Present.

Sir LESLIE C. MILLER, Kt., C.B.E., Chief Judge,

and

Mr. Justice T.J. CHANDRASEKHARA AIYAR.

Criminal Appeal No. 120 of 1919 - 20.

The Government of Mysore ...Complainant... APPELLANT

Vs.

T. Venkataramaiya ... Accused ... RESPONDENT

Criminal Appeal against the order of acquittal passed by the Sessions Judge of Mysore in Criminal Appeal No. 71 of 1919-20, setting aside the conviction and sentence by the City Magistrate of Mysore, under section 332 of the Indian Penal Code, in Criminal Case No. 247 of 1918-19.

This appeal coming on for hearing on Thursday, the 12th day of August 1920, the court delivered the following :-

JUDGMENT.

J U D G M E N T.

In our opinion this appeal is well founded and must succeed.

It is beyond doubt that the complainant was somewhat severely assaulted; his assailant seized his (complainant's) walking stick from him and struck him with it twice, injuring his head and his arm. The only question is whether the accused was the assailant.

On the 31st of March 1919 the complainant and the accused had some sort of altercation in the office of the former who is a Superintending Engineer in the Railway Department, and the accused was turned out of the office, and went straight in a very excited state to the witness Mr. Dani, the agent of the Mysore Railways. So excited was he that the witness thought it best not to hear his story and got one of his assistants who is not a witness to deal with him. A great deal of evidence mostly documentary has been put in to trace the origin of the altercation, and it has been referred to by Mr. Govindaraghava Iyer as proof that the complainant was actuated by malice against or very active dislike of, the accused, and for that reason obstructed in every possible way the settlement of his claims against the railway department. We do not think the evidence is sufficient to make this out. We do not propose to discuss it: the most it can be said to prove, if we assume that the complainant was altogether in the wrong, is that he was obstinate, very anxious to get his own way, very inconsiderate in dealing with the accused's claim for settlement of his work bill and

very

very unjust to the accused. But if this is all that it proves it does not help the accused. The more inconsiderate, the more unjust the conduct of the complainant, the more likely was it to have exasperated the accused.

As the evidence stands we think it unlikely that the complainant knew on the 2nd of April that the accused had addressed a threat to him in a registered letter to take civil and criminal steps against him: the inferences of the Sessions Judge on this point seem to be without much foundation. We see no reason to refuse credence to the complainant's assertion that he did not himself refuse or know of the refusal of the registered letter addressed to him, and the most that can be said is that it is possible that before he left his office on the 2nd of April he knew that the Agent had received a registered letter and knew of its contents. But it cannot be said that this is proved.

This evidence is led in order to shew that the complainant when he left his office had reason to fear that his conduct towards the accused might lead him into trouble with his employers, the Government of Mysore, and so might give rise to a motive to implicate the accused before he should get into difficulties.

We may doubtless reasonably assume that his quarrel with the accused was present to the mind of the complainant when he started for his walk on the evening of the 2nd of April but we do not think anything is proved that would suggest the conclusion that he was likely if he was assaulted by some one other than the accused, to concoct a false case against the

accused

accused, letting his real assailant go free.

Mr. Govindaraghava Iyer did not indeed ask us to go so far as this: he suggested that in the darkness of the evening the complainant failed to recognize the offender, and either took the opportunity of foisting the charge on the accused, or persuaded himself in the state of mind in which he then was, that the offender must have been the accused.

But there is nothing in the evidence to suggest that at the time of the assault the evening was so dark that there would have been any difficulty in recognizing an assailant at close quarters. It is true that the 2nd witness for the prosecution in cross examination says that it was dark and he could not recognize the person whom in his chief examination five months before he had stated to be the accused, but even then he admitted that from the place where he was standing on the 'upstairs' of the Public Offices he could see how the man was dressed, and there is no witness who suggests that there would have been any difficulty in seeing the features of a man at close quarters.

Though the cross examination of the complainant was not completed he was cross examined as to the assault and no question was asked suggesting that he might have been unable to identify his assailant. The 5th and 6th witnesses for the prosecution who are called to corroborate the complainant by relating what he said to them a few minutes after the occurrence were fully cross examined but were asked nothing as to the possibility or impossibility of recognition of faces at the hour at which they met the complainant, and

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the third witness for the prosecution who supports the defence says he saw the person clearly'.

There is thus nothing to support the defence as put before us, and it is very improbable that the complainant was as was suggested attacked from behind, so suddenly that he could not see who struck him: he was beaten with his own stick, and it is not far from absurd to suppose that an assailant coming with the idea of attacking him from behind would come unarmed.

The question is simply whether the complainant's statement is to be preferred to those of the prosecution witnesses who say that the assailant was, or was dressed like, a Muhammadan. The complainant told his story within a very short time to his friends, the 5th and 6th witnesses for the prosecution. They are discredited by the Sessions Judge as being 'relations'. They are of the complainant's caste, but are not shown to be his relations though they are relations of one another: it was not however argued before us that he did not tell them that he was assaulted by the accused: it was rather suggested that by the time he met them he had made up his mind to charge the accused with the offence - a suggestion which in our opinion has little to recommend it. The time was too short, and he must have been too much occupied with his hurts to have made up a story against the accused then, unless of course we accept the view that he could not have identified his assailant, and that we have declined to accept.

The 2nd, 3rd and 9th witnesses for the prosecution stated that the assailant of the complainant was

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or looked like a muhammadan, and the Agent of the Railway was called to say that there had been some trouble with muhammadan contractors. The magistrate is of opinion that these witnesses, with the exception of the Agent, were tampered with by the accused, and this seems not improbable, judging from the way the second witness has changed his story between the dates of his chief examination and cross examination. There is nothing in the Agent's evidence to suggest that any muhammadan contractor was particularly incensed against the complainant and we cannot believe that if attacked by a muhammadan contractor the complainant would not have laid his charge against him. There is no evidence whatever to suggest that he was or had reason to be so afraid of any particular muhammadan that he would be less likely to prefer to shield him rather than to prosecute him.

We agree with the magistrate in discrediting the evidence of the 2nd, 3rd and 9th witnesses for the prosecution, and in preferring to accept the evidence of the complainant.

The Sessions Judge is of opinion that the trial was vitiated because on the 13th of August 1919 the magistrate refused an adjournment. We do not share that opinion: we think the opportunities given to the accused to cross examine the complainant were sufficient, and we were not shown what further information the defence expected to extract from him except the production of certain comparatively unimportant documents which were allowed in by the Sessions Judge at the hearing of the appeal. It is clear that at that time (in August 1919) no one thought of suggesting that the complainant

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might have mistaken the identity of his assailant. That is shown by the absence of any suggestion of the kind in the examination of the other witnesses.

The 4th and 5th witnesses for the prosecution were not cross-examined and the same complaint is made of want of opportunity: we cannot accept the complaint as sufficient to warrant us in holding the trial to be defective. The 4th witness says nothing very material and may be disregarded: the 5th speaks only to the occurrence on the 31st of March and there is no suggestion that on that date there was any conspiracy to bring the accused into trouble. The details of the occurrence on the 31st of March are essentially unimportant and whether or not the Sessions Judge is right in saying that that part of the case has been 'developed', there has been no 'development' of the case so far as it relates to the actual assault.

The trial has not in our opinion been vitiated by the refusal of the Magistrate to adjourn the hearing on the 13th of August 1919.

The Sessions Judge concurs with the Magistrate in refusing to accept the defence of alibi, and we see no reason to doubt the correctness of his conclusion on that point.

The conviction is under S3 section 332 of the Penal Code the assault being held to be in consequence of the acts of the complainant as a public servant. There is no doubt that the assault was committed as a consequence of ill feeling engendered by acts done by the complainant in his public capacity, that is to say

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that but for such acts there would probably have been no ill feeling. But it is not clear that the assault was premeditated. The accused came under ed to the place of occurrence, and even if the 4th witness for the prosecution is believed the evidence only shows that he wanted an opportunity of meeting the complainant, possibly with the intention of assaulting him, but equally possibly with the intention of 'giving him a piece of his mind', and it is not impossible that what really provoked the blows was the woman's disdainful attitude, which the complainant according to his own statement seems to have assumed when spoken to rather vehemently and abusively by the accused.

It is doubtful whether the section applied to the circumstances of this case and we think we ought to alter the conviction to one under section 323 as to which the evidence is clear.

The magistrate has imposed a sentence of rigorous imprisonment for a year, but while we agree that the offence is serious, we think it is not deserving of the maximum punishment which can be inflicted under section 326; and we set aside the sentence passed under section 332, and sentence the accused under section 323 to be rigorously imprisoned for two months and to pay a fine of Rs. 200/-; in default of payment to be further rigorously imprisoned for one month.

(sd) Leslie C. Wille

CHIEF JUDGE.

"True Copy"

Registrar

(sd) K. T. Chandrasekhara

J.

B/L

G. R. S. VI—G/32]

SUBJECT.....

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Diary No. of letter replied to.....

General and Revenue Secretariat

( )

, the *191* .

Date of issue 26/11

Signed by

Section 615

File No. 256-19

Serial No

No.

To

The Railway Secretary

Mysore

Sir

I am directed to request that the file (papers of your office regarding the Annuity Case of Mr. Ananthacharya, Ex-Asst. Engineer, Mysore Railways, may be kindly forwarded to this office for reference & return.

Yours etc.

Dy. Secy.

19/11

Encl.

D. 19/11

for 20/11

MRM-44-1000-2-11-1920

No. [illegible]

RAILWAY SECRETARIAT,

Bangalore, 2nd December 1920.

1297

From

C. Dove Wilson, Esq.,

Secretary to the Government of Mysore for Railways,

BANGALORE.

256-19

To

The Secretary to the Government of Mysore,
Revenue Department.

Subject:- Assault case of Mr. Ananthacharya, Retired Superintending Engineer, Mysore Railways.

Sir,

As desired in your letter No.G.10480-Cts.256-19-2 dated 26th November 1920, I am directed to send herewith, [illegible] sections of this office file of papers relating to the above.

Your office file of papers containing 5 sections and Public Prosecutor's letter, on the subject, is also herewith returned.

The favour of an acknowledgment is requested.

I have the honour to be,
Sir,
Your most obedient servant,

For Secretary for Railways,
Government of Mysore.

ALM.

G. R. S. VI—G/32]

SUBJECT.....

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Diary No. of letter replied to.....

General and Revenue Secretariat

( )

, the 191 .

Date of issue 6/1

Signed by M' ~~Secy~~ Rev

Section C5

File No. 256-C9.

Serial No 11

No. G12897

To

The Agent, Jagdalpur Extension Railways

Sir,

I am directed to with thanks acknowledge the receipt of the file of papers re the assault case of Mr. Ananta Charanja, received with your letter no KS.41902-12-20.

I have etc

D M

23/1/20 for Secy

Ess 19/2/20 sec

Ans

G.R. S. VI—G/32]

SUBJECT.....

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Diary No. of letter replied to.....

General and Revenue Secretariat

( )

, the *191* .

Date of issue 6/3

Signed by W. Bn.

Section C to

File No. 256-G.

Serial No —

No. G 17361 file

To

The Secy to Govt. of Railways

Sir,

I am directed to return herewith the file of papers relating to Jaintia Rly. received with your letter no R.S. 1619 D 2-12-1921.

I have etc

D. M.
4/3
for Secy

Yes
23/2/22

over.